

REMARKS

In response to the Office Action mailed on June 30, 2008, Applicant respectfully requests reconsideration based on the above claim amendments and the following remarks. Applicant respectfully submits that the claims as presented are in condition for allowance.

First, Applicant wishes to thank Examiner Jeanty for the telephone conference on November 3, 2008 in which Examiner Jeanty kindly explained his perspectives on the Office Action. Various embodiments of the invention were discussed in reference to the specification, figures, and claims. The Kane reference was discussed in reference to Claims 18, 21, 28. Applicant pointed out various differences between the reference and claims. The Examiner stated that further consideration was required before making any determination on allowability of the claims. In light of the telephone conference and in compliance with 37 C.F.R. 1.133(b), the following remarks are respectfully submitted.

Claim Disposition

Claims 1-28 are pending in the application. Claims 1-17 have been withdrawn from consideration. Claims 18-28 have been rejected.

Claim Amendments

Claims 18, 21, and 28 have been amended and Claim 29 has been added, leaving Claims 18-29 for consideration upon entry of the present amendment. No new matter has been added by the amendments.

Support for Claim Amendments

The amendments to Claims 18, 21 and 28, as well as newly added Claim 29, are fully supported in Applicant's specification. See, for example, FIGs. 2 – 4 and the associated description thereof.

Claim Rejections - 35 U.S.C. § 103

Claims 18-28 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Kane et al. U.S. Publication Number (US 20030014291) (hereinafter “Kane”). Applicant respectfully traverses the rejection and submits that Kane does not teach or suggest all of the elements of Claims 18-28.

Regarding Claim 18, Kane fails to teach or suggest each and every element of Claim 18. Kane describes optimizing a product factor associated with a product (Kane, Abstract). However, it is unclear in Kane as to what specific results are achieved and how optimization is actually performed. Kane makes many broad assertions about using “standard linear programming techniques, well known to those skilled in the art, to produce an optimized result.” (see for example, Kane, paragraph [0038]). Kane is concerned with attempting to determine whether increasing or decreasing shelf space, which is associated with a product, will affect sales and profitability (Kane, paragraph [0009] and [0036]). Paragraph [0034] of Kane teaches that factor data and hierarchical data for stores may be maintained electronically. Kane teaches that shelf space is managed as defined shelf space sets for various products (Kane, paragraph [0029]). Paragraph [0047] of Kane states that “various shelf space sets which may have been defined by the store and associated with the product or product category are received. As previously presented, these shelf space sets are discrete sets such that they are not modified unless by some administrative operation, and for purposes of optimization the sets are not extrapolated or interpolated.” Applicant respectfully asserts, that at most, paragraph [0038] teaches that a user can manually override constraints, such as a shelf space attribute, prior to optimization. This is not the same as “assigning shelf space to each said existing product” and “updating said store layout responsive to said assigning”, as recited in Claim 18. Moreover, Applicant respectfully submits that Kane fails to teach or suggest “assigning shelf space to each said existing product, wherein said assigning includes placing each said existing product in close geographic proximity to another said existing product with the same type, wherein at least two of said existing products with

the same type assigned in close geographic proximity have different storage unit temperature requirements”, as recited in Claim 18. For at least the above reasons, Applicant respectfully submits that Claim 18 is patentable over Kane.

Claims 19, 20 and 29 depend from Claim 18 and are patentable for at least the same reasons that Claim 18 is patentable. Since they contain similar elements, Claims 21 and 28 are patentable for at least the same reasons that Claim 18 is patentable. Claims 22 – 27 depend from Claim 21 and are patentable for at least the same reasons that Claim 21 is patentable.

In rejecting Claims 18, 19, 21, and 28, the Examiner relies upon what is well known in the art. It is inappropriate for the Examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. See MPEP § 2144.03. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21. Applicant respectfully requests that the Examiner cite a prior art reference to support these assertions.

Regarding Claim 29, Applicant respectfully submits that Kane fails to teach or suggest “wherein the at least two of said existing products with the same type in close geographic proximity having different storage unit temperature requirements are assigned to a common aisle of the grocery store”, as recited in Claim 29. Accordingly, Applicant respectfully submits that Claim 29 is also allowable.

Conclusion

Applicant is not conceding in this application that the original claims are not patentable over the art cited by the Examiner. Rather, the present claim amendments are only for facilitating expeditious prosecution. Applicant respectfully reserves the right to pursue these and other claims in one or more continuations and/or divisional patent applications.

It is believed that the foregoing remarks are fully responsive to the Office Action and that the claims herein should be allowable to the Applicant. In the event the Examiner has any queries regarding the instantly submitted response, the undersigned respectfully request the courtesy of a telephone conference to discuss any matters in need of attention.

If there are any additional charges with respect to this Response or otherwise, please charge them to Deposit Account No. 06-1130.

Respectfully Submitted,

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